

### **REMARKS/ARGUMENTS**

Claims 1, 2, 4-8, 18, and 20 have been amended. Claim 1 has been amended to incorporate the recited elements of dependent claim 3. Claims 2 and 4-8 have been amended to include minor changes of a grammatical or typographical nature. Claim 18 has been amended to incorporate the recited elements of originally-filed claim 1. Claim 20 has been amended to change the dependency of the claim so that it now depends from claim 1.

Claim 3 has been canceled. Claims 10-17 have been withdrawn.

New claims 21-28 have been added. New claim 21 contains subject matter based on claims 1 and 5-8 as originally filed. New claims 22-27 contain subject matter based on originally-filed claims 2 and 4-8 respectively. New claim 28 contains subject matter based on originally filed claims 1, 5, and 9.

No new matter has been added by this Amendment.

### **Allowable Subject Matter**

Applicants wish to thank the Examiner for his indication that the subject matter of claims 3, 18, and 19 is allowable.

### **Objections to Claims**

The Examiner has objected to claims 3, 18, and 19 for being dependent upon rejected base claim 1, but has indicated that the claims would be allowable if rewritten in independent form.

Applicants have amended claim 18 by incorporating all of the recited elements of claim 1. Applicants respectfully submit that claim 18 and claim 19, which depends from claim 18, are now in condition for allowance. Therefore, Applicants respectfully request that the objection to claims 18 and 19 be withdrawn.

As further discussed below, Applicants have canceled claim 3 and has incorporated the recited elements of claim 3 into independent claim 1. Therefore, Applicants respectfully submit that the objection to claim 3 is now moot, and Applicants respectfully request that this objection also be withdrawn.

Moreover, the Examiner has objected to claim 20 as being dependent upon a non-elected claim. Applicants have amended claim 20 to depend from independent claim 1, which is an elected claim. Therefore, this objection to claim 20 should be withdrawn.

### **Rejections Under 35 U.S.C. §§ 102 and 103**

The Examiner has rejected claims 1, 2, and 5-9 under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,174,871 to Hammond *et al* ("Hammond"). The Examiner has also rejected claims 1, 4, and 20 under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,199,554 to Mann *et al*. ("Mann") in view of United States Patent No. 6,121,775 to Pearlman ("Pearlman"). These rejections are respectfully traversed.

As discussed above, claim 1 has been amended to further comprise the recited elements of claim 3, which the Examiner has found to include allowable subject matter. Therefore, Applicants respectfully request that the rejections to claims 1, 2, 4, 5-9, and 20 be withdrawn.

### **New Claims**

Applicants have added new claims 21-28. Applicants respectfully requests that these new claims be allowed by the Examiner, as they are neither anticipated nor made obvious in light of the prior art.

More specifically, new claim 21 recites that the growth factor be introduced into the target area by one of three methods: "(i) drawing the growth factor into myocardial tissue at said site by iontophoresis from a reservoir placed against the site, (ii) forming a channel in the myocardium at said site, and placing the growth factor into the channel, or (iii) bombarding said site with a biolistic particle containing or coated with the growth factor." Support for these recited elements may be found, for example, on page 13, lines 24-30 of the specification as originally filed.

It is clear that Hammond, Mann, and Pearlman, either singly or in combination, do not disclose, teach or suggest any one of these three methods for introducing growth factor into the target area. Rather, Hammond teaches the injection of growth factor directly into the lumen of the coronary arteries; Mann teaches injecting the growth factor into the heart tissue close to but not within the channels created in the heart tissue; and Pearlman while disclosing the use of contrast medium with MRI imaging, does not disclose, teach, or suggest ways of introducing growth factor into the myocardium. Because new claims 22-27 depend from claim 21, these claims are also allowable over the cited references.

Furthermore, new claim 28 recites that "a temporal gradient of growth factor availability" is created in the target area. Support for this claim may be found, for example, on page 15, lines 14-30 of the specification as originally-filed. Hammond, Mann, and

Pearlman do not disclose, teach, or suggest, either singly or in combination, this recitation of claim 28. Therefore, claim 28 is allowable over these cited references.

In light of the above amendments and remarks, Applicants respectfully submit that the claims are now in condition for allowance. A fee of \$42.00 (small entity) is believed due along with the submission of this Amendment for the addition of an independent claim in excess of three. Should any additional fees be due, please charge any such fees to Pennie & Edmonds LLP deposit account no. 16-1150.

Respectfully submitted,

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